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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

John Alberto Jaimes,
Plaintiff,
vs.
American First Finance, LLC.
Respondent.

CASE NO.: 3:23-cv-00978-SK

AMENDED COMPLAINT FOR:

1. Violation of Unfair & Deceptive Business Practices (Cal. Bus. & Prof. Code § 17200 *et seq.*);
 2. Violation of Consumers Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*); and
 3. Failure to provide Spanish language contract in violation of Cal. Civ. Code § 1632.

1 1. Plaintiff, John Alberto Jaimes, (hereinafter “Plaintiff”) alleges on the basis of
2 Plaintiff’s own acts, facts known to Plaintiff, the investigation of Plaintiff’s counsel, and belief
3 as to all other matters, as follows:

4 **I. INTRODUCTORY STATEMENT**

5 2. Plaintiff brings this complaint against Respondent American First Finance, LLC
6 (“American First Finance”) for the unlawful consumer loan (“Installment Loan”) that American
7 First Finance originated. This case challenges a business scheme developed by AFF to
8 camouflage loans exceeding 120% interest to extract millions of dollars from vulnerable
9 consumers who purchase retail goods.

10 3. The Installment Loan violates California Law because, at the time American
11 First Finance made this loan, it did not have the license required by Cal. Fin. Code §22000 *et*
12 *seq.* (known as the California Financing Law) to offer and fund loans in California. The
13 California Financing Law requires the licensing and regulation of finance lenders making
14 consumer loans and prohibits misrepresentations and fraudulent and deceptive acts in
15 connection with making loans. A finance lender is defined in the law as “any person who is
16 engaged in the business of making consumer loans . . .”

17 4. Loans made by licensed lenders have interest rate caps. Loans under \$2,500 are
18 subject to tiered interest rate caps, with 30% as the highest APR that can be charged. For loans
19 between \$2,500 and \$9,999, beginning January 1, 2020, there is an interest rate cap of 36% plus
20 the Federal Funds Rate on consumer loans. American First Finance, however, simply ignores
21 these interest rate caps in California, charging interest rates typically ranging from 120% to
22 170% annually.

23 5. In order to evade these interest rate caps, American First Finance has concocted a
24 scheme (the “Rent-a-Merchant Scheme”) that tries to take advantage of the provision in the
25 California Financing Law which exempts certain *bona fide* retail installment sales contracts.
26 The Financing Law provides that it “does not apply to bona fide conditional contracts of sale

1 involving the disposition of personal property when these forms of sales agreements are not
 2 used for the purpose of evading this division.” Cal. Fin. Code §22054. American First Finance,
 3 which is a national lender and not a retail seller of goods or services in California, structures its
 4 transactions as retail installment sales contracts primarily for the purpose of evading the
 5 restrictions of the California Financing Law.

6. The Rent-a-Merchant Scheme does not absolve American First Finance of the
 7 obligations California imposes on lenders because California looks past form to the substance of
 8 a transaction to identify the true lender in a transaction. “The courts have been alert to pierce the
 9 veil of any plan designed to evade the usury law and in doing so to disregard the form and
 10 consider the substance. . . . No case is to be judged by what the parties appear to be or represent
 11 themselves to be doing, but by the transaction as disclosed by the whole evidence[.]” *Milana v.*
 12 *Credit Disc. Co.*, 27 Cal. 2d 335, 340-341 (1945) (internal markings and citations omitted).

7. The California legislature also codified the “judicial principle that the substance
 14 of a transaction rather than its form is determinative of its characterization as a loan or credit
 15 sale[.]” Cal. Civ. Code §1801.6(a).

8. The actions American First Finance undertakes to make installment loans to
 17 consumers demonstrate that American First Finance, not any individual merchant, is the true
 18 lender in such transactions and, as such, it is an unlicensed lender in violation of California’s
 19 Financing Law.

9. In addition, American First Finance loans violate California law because
 21 American First Finance charges an unconscionably high interest rate as reflected in its Annual
 22 Percentage Rate (“APR”).

10. The APR Provision in the Security Agreement between the parties requiring
 24 Plaintiff to pay an APR of 169.88% or more in connection with the Installment Loan is
 25 unconscionable under the analysis prescribed by the California Supreme Court in *De La Torre v.*
 26 *CashCall, Inc.*, 5 Cal. 5th 966, 984 (2018).

1 11. Plaintiff seeks a determination that the Security Agreement is subject to the
2 California Financing Law §22000 *et seq*; that American First Finance did not have the license
3 required by the California Financing Law necessary to offer and fund loans in California; that
4 the Security Agreement is void; that the APR Provision is unconscionable; that American First
5 Finance had no right to collect or receive any principal, charges, or recompense in connection
6 with the transactions. Given these facts, Plaintiff seeks a public injunction prohibiting American
7 First Finance from continuing to offer financing in California without obtaining the appropriate
8 license and from collecting on loans that it has already made in violation of the California
9 Financing Law.

10 12. In this case, Plaintiff has been obligated to pay for financing at terms – including
11 exorbitant interest rates – that were neither requested nor agreed to. Attached as Exhibit 1 is a
12 true and correct copy of the first page of the Security Agreement that is the subject of this
13 action. At the time of this filing, Plaintiff does not have a copy of the entire Security Agreement
14 that is the subject of this claim, a true and correct copy of which is in the possession of
15 American First Finance.

16 13. The standard form contract for American First Finance contains an arbitration
17 provision. However, as alleged in more detail below, there was no meeting of the minds
18 between the Merchant and Plaintiff with regard to either the arbitration provisions or the other
19 terms of the purported contract. Plaintiff is a native Spanish speaker and the transaction was
20 negotiated in Spanish without disclosure of any arbitration provisions or the APR or the other
21 material terms. Plaintiff relied on the Merchant's representations to understand the terms of the
22 transaction, but those representations were false, contained material omissions and did not
23 match the terms in the written document. The Merchant created the document in English in
24 violation of Cal. Civil Code §1632, as well as other California statutes.

25 **II. THE PARTIES, JURISDICTION AND VENUE**

26 **A. Plaintiff**

27 14. Plaintiff is a resident of Sunnyvale, CA.

1 **B. Respondent American First Finance**

2 15. Respondent American First Finance, LLC is a limited liability company
3 organized and incorporated under the laws of the State of Delaware with its principal place of
4 business at 3515 N. Ridge Rd, Ste. 200, Wichita, KS 67205.

5 16. Prior to December 9, 2021, Respondent American First Finance was a
6 corporation organized and incorporated under the laws of the State of Delaware.

7 17. On December 9, 2021, American First Finance converted into the Delaware
8 limited liability company now known as American First Finance, LLC.

9 18. Effective December 17, 2021, American First Finance became a wholly owned
10 subsidiary of Firstcash Holdings, Inc., a Delaware corporation with principal executive offices
11 at 1600 West 7th Street, Fort Worth, TX 76102.

12 19. American First Finance does not hold a license to offer loans in California.

13 20. Plaintiff is informed and believes, and on that basis alleges, that at all times
14 stated herein American First Finance was the original obligee, or in the alternative, was the
15 “holder” of Plaintiff’s obligations as acknowledged by American First Finance in the language
16 found in the Security Agreement.

17 21. This Court has jurisdiction over this matter pursuant to C.C.P. §410.10. Venue is
18 proper in this Court pursuant to C.C.P. §395(b) because the case involves an extension of credit
19 that occurred in this County to Plaintiff, who is a resident of this County, and Defendant does
20 business in this County. Jurisdiction is unlimited because this complaint seeks a permanent
21 injunction.

22 **III. FACTUAL ALLEGATIONS**

23 **A. The Loans Offered by American First Finance**

24 22. American First Finance provides loans for the sale of consumer goods and
25 services through retailers with whom American First Finance has a preexisting relationship.
26 American First Finance delivers almost instant credit approvals with little to no credit history.

1 American First Finance provides loans of up to \$5,000 for purchases at interest rates typically
2 ranging from 120% to 170%.

3 23. The consumers that American First Finance targets are individuals with poor
4 credit. These individuals are easy prey for unscrupulous lenders because, as a result of
5 frequently being denied credit, they are usually willing to take the first offer of credit they
6 receive. This means they do not engage in comparison shopping of different credit offers to seek
7 out the best credit terms. In some cases, merchants offer financing through multiple lenders
8 through which a customer's credit data can be run, ranging from a high-quality lender like
9 Synchrony Bank down to the lowest quality lender, American First Finance. The other lenders
10 included in this process are licensed to make loans in California, but American First Finance is
11 not.

12 24. American First Finance provides the loans through a standard "Security
13 Agreement," differing only the interest rates and total amount of the loan based on the amount
14 of the purchase and its evaluation of the borrower's credit rating.

15 25. Each loan has an interest free period of 90 or 101 days at the beginning of the
16 loan, which enables merchants to tell customers not to worry about what the interest rate is
17 because there will not be any interest if the loan is repaid during the interest free period.

18 **B. American First Finance's Process for Originating and Servicing Loans**

19 26. American First Finance widely advertises its loan services through social media,
20 on its own website, on its merchants' websites and through posters and brochures placed in its
21 merchants' storefronts.

22 27. A customer can apply for a loan from American First Finance by clicking on a
23 link in a merchant's website, by texting a numerical code on a cell phone or by providing their
24 information to a merchant who inputs the information into the web portal provided and managed
25 by American First Finance. Once the information is input the approval is typically provided in a
26 minute or two. If the customer applies directly through their cell phone or a computer link, they
27 receive back from American First Finance a numerical code. The customer shows the code to
28

1 the merchant, who inputs the code into the American First Finance portal. American First
2 Finance then generates the loan documentation which can be accessed through the web portal.
3 The loan documents can then be “signed” by either the merchant clicking through the signature
4 blocks, or through a DocuSign email that might appear on the customer’s phone, which then
5 scrolls directly to the signature locations, bypassing and obscuring such terms as the TILA
6 disclosures, interest rates, arbitration provisions and the like. Alternatively, some merchants use
7 a separate electronic signing pad, separated from the screen on which the agreement appears,
8 and ask customers to sign the pad however many times is required for the agreement without
9 making the agreement visible to the customer who is signing.

10 28. The merchant then electronically indicates its signature and the document is
11 completed in the files of American First Finance. In most instances, the merchant has no way to
12 deliver a copy of the agreement to the customer. Although the agreement purports to be
13 between the customer and the merchant, pursuant to the prior arrangement between the
14 merchant and American First Finance, all of the customer’s obligations run directly to American
15 First Finance from the moment the document is signed.

16 29. In many instances, American First Finance prepares the merchant’s invoice on its
17 own form through its automated document generation process, which is not provided to the
18 consumer at the point of sale.

19 30. American First Finance’s loan agreement is a non-negotiable, clickthrough
20 agreement, the terms of which are dictated by American First Finance, non-modifiable by the
21 merchant and non-negotiable by consumers.

22 31. Throughout the consumer purchase transaction, the role of American First
23 Finance and the terms of the transaction are never fully disclosed to the consumer.

24 32. American First Finance makes the sole determination of consumers’
25 creditworthiness and dictates all financing decisions.

1 33. American First Finance handles all administration of these loans. Payments are
 2 made either weekly, biweekly or monthly by direct removal from customers' bank accounts in
 3 most instances.

4 **C. American First Finance's Relationships with Merchants**

5 34. American First Finance provides Installment Loans for the sale of consumer
 6 goods or services through the use of its network of retailers. Merchants comply with American
 7 First Finance's fraudulent and illegal scheme because the merchants are able to increase their
 8 sale of goods or services to consumers by offering an installment payment option through no
 9 effort of their own because American First Finance controls the entire process, leaving nothing
 10 for the merchant to do beyond selling their goods and services and then inputting customers'
 11 credit information into the American First Finance web portal. The retailer gets paid all or
 12 nearly all of the retail price directly by American First Finance on behalf of the customers, while
 13 the customers get saddled with automatic withdrawals from their bank accounts at exorbitant
 14 interest rates. The retailers and American First Finance generate massive profits off of these
 15 vulnerable consumers, many of whom are trying to buy goods on sale or at discount prices
 16 without ever knowing that the financing will triple the cost of their purchases.

17 35. American First Finance provides merchants with an electronic portal to enter
 18 consumer information, uses that consumer information to generate Security Agreements, and
 19 induces merchants to present the Installment Loans that are issued pursuant to these Security
 20 Agreements as loans that on their face purport to be originated by the merchants and then
 21 assigned to American First Finance, but in fact, are originated by American First Finance.

22 36. American First Finance's involvement with the merchants goes beyond that
 23 necessary to effectuate the purchase of credit sales, in that:

- 24 a. American First Finance enters into Merchant Agreements with
 25 retailers prior to consumers contemplating a purchase of goods;

- 1 b. Merchants are required to create an online account with American
- 2 First Finance prior to offering American First Finance loans to
- 3 consumers;
- 4 c. American First Finance provides in-store marketing materials to
- 5 merchants for American First Finance products;
- 6 d. American First Finance provides in-person and online training to
- 7 merchants on how to prepare and upload American First Finance
- 8 forms to its website;
- 9 e. American First Finance provides merchants with a hyperlink to
- 10 American First Finance's pre-approval process that can be integrated
- 11 into the merchants' own retail websites;
- 12 f. American First Finance runs incentive programs that directly reward
- 13 merchant staff for each Installment Loan that they successfully
- 14 market to store customers; and,
- 15 g. American First Finance regulates how merchants can advertise the
- 16 Installment Loans and promote such services in social media. It
- 17 monitors such activity, and takes corrective action when merchants do
- 18 not comply with its rules.

19 37. It is American First Finance, not any of the merchants, that holds the
20 predominant economic interest in these loans. American First Finance bears the risk of poor
21 loan performance and performs all the functions of a traditional lender with virtually no
22 downside to the merchant. American First Finance is the true lender and its loans are illegal.

23 38. American First Finance made and continues to make these loans in willful
24 violation of California Financing Law and, in any event, has had more than 60 days since
25 notification of the error to notify the customer and correct the error.

1 **D. Facts as to Plaintiff**

2 39. Around July 1, 2021, Plaintiff visited Ramos Furniture (“Merchant”) in Santa
 3 Clara, California. At the store, he picked out a bedroom set that he wanted to purchase. The
 4 bedroom set he selected was priced at a 25% discount due to the condition of the furniture.
 5 Plaintiff believed he was saving around \$750 off the full retail price with this selection. He paid
 6 the Merchant a \$280 down payment with his credit card and, at the Merchant’s urging, financed
 7 the remaining \$2,150.

8 40. The Merchant who helped Plaintiff spoke Spanish. Also speaking Spanish,
 9 Plaintiff told the Merchant that he intended to pay for the bed with his own funds. The
 10 Merchant, however, suggested that Plaintiff consider financing his purchase and told Plaintiff
 11 that financing would help his credit score. The Merchant also told Plaintiff that the interest on
 12 the loan was low and that he would not have to make any loan payments until after the bed was
 13 delivered. The Merchant further told Plaintiff that if he paid the amount financed of \$2,150
 14 within three months, there would be no interest at all.

15 41. Based on the Merchant’s representations, Plaintiff agreed to apply for financing.
 16 The Merchant collected Plaintiff’s banking information and completed the loan application on
 17 the Merchant’s computer. The Merchant then informed Plaintiff that he was approved for
 18 financing.

19 42. The Merchant printed out the Security Agreement and collected Plaintiff’s
 20 signatures on the document, but the Security Agreement was written in English and Plaintiff
 21 could not read or understand anything in the document, but was relying on the representations of
 22 the Merchant. The Merchant did not disclose any of the provisions related to arbitration. He
 23 also neglected to explain that the APR on the loan was 169.88% and that the savings of around
 24 \$750 that Plaintiff thought he would benefit from by selecting the discounted merchandise were
 25 dwarfed by the finance charge on this loan of \$5,439.74. At the end of this process, the
 26 Merchant only provided Plaintiff with a copy of the first page of the Security Agreement and the
 27 one page “Sales Order” for his purchase.

1 43. The Merchant also told Plaintiff that his bed would arrive within 90 days and
 2 once the bed was delivered, he would have three months to pay off his loan. However, the bed
 3 was not in fact delivered to Plaintiff until on or about January 31, 2022 – almost 7 months after
 4 the purchase.

5 44. American First Finance began withdrawing loan payments from Plaintiff's bank
 6 account in connection with the Installment Loan shortly after the July 1, 2021 transaction.
 7 Plaintiff did not pay off the loan during the three month interest free period because he was
 8 under the impression that regardless of any payments made prior to delivery of the bed, he
 9 would still have three months after delivery to pay off the loan without interest. .

10 45. A few months later, Plaintiff noticed these withdrawals and contacted the
 11 Merchant to find out why loan payments were being withdrawn when his bed had not been
 12 delivered. The Merchant apologized to Plaintiff but did nothing further.

13 46. Plaintiff later learned that the Installment Loan contains an APR Provision
 14 authorizing an exorbitant interest rate of 169.88%.

15 47. Plaintiff is still making loan payments pursuant to the Security Agreement in an
 16 effort to protect his credit score.

17 48. If Plaintiff had known of the interest rates and other terms of the Installment
 18 Loans, Plaintiff would not have signed the Security Agreements, but instead would have
 19 explored alternative financing sources, paid cash, or delayed the purchase.

20 49. The contracting practices that American First Finance used against Plaintiff were
 21 procedurally unconscionable:

22 a. American First Finance's Security Agreement is a non-negotiated,
 23 take-it-or-leave-it contract with terms that Plaintiff had to accept or
 24 reject without any modifications;

25 b. Because market imperfections exist in the loan market for borrowers
 26 whose demographic group includes Plaintiff, there is no "freely

1 competitive market”¹ determination of APRs for loans such as the
 2 Installment Loan;

3 c. Based on Plaintiff’s credit score, American First Finance correctly
 4 deduced that Plaintiff was likely to accept its offer for credit without
 5 scrutinizing the terms of its Installment Loan;

6 d. American First Finance capitalized on this knowledge to offer Plaintiff
 7 an Installment Loan without disclosing the full extent of its
 8 involvement in the Installment Loan and the complete terms of the
 9 transaction;

10 e. Plaintiff was pressured through the signing process by the Merchant
 11 who knew that Plaintiff could not read the English version of the
 12 contract and did not care if Plaintiff understood any of the provisions
 13 of the Installment Loan or not;

14 f. American First Finance further conceals the terms of the Security
 15 Agreement by using unnecessarily complex language that Plaintiff was
 16 unlikely to understand;

17 g. By withholding and obscuring key loan information during the
 18 contracting process, American First Finance created unfair surprise for
 19 Plaintiff;

20 h. Even though more consumer friendly contracting processes existed,
 21 American First Finance dictated and controlled a process by which
 22 Plaintiff was not shown a copy of the Security Agreement before being
 23 asked to sign and was not given a printed copy of the Security
 24 Agreement even after signing the agreement;

25 i. Even for consumers who do understand English, American First
 26 Finance uses a signing process and customizable DocuSign settings

27 ¹ *De La Torre v. CashCall, Inc.*, 5 Cal. 5th 966, 984 (2018).

1 that obscures pages of the contract and materially interferes with
 2 consumers' ability to learn the terms of the Security Agreement before
 3 signing; and

4 j. American First Finance designed a signing process that is intended to
 5 evoke the protections that federal and state laws provide for ensuring
 6 required disclosures to consumers.

7 50. The APR Provision in the Security Agreement is substantively unconscionable
 8 because the APR that it applies to a secured loan is shockingly high and harsh without any
 9 legitimate basis for charging such rates to borrowers such as Plaintiff.

10 a. An expert economist retained by American First Finance testified that
 11 most of American First Finance customers in California would be in the
 12 subprime or deep subprime credit categories, which include consumers
 13 with credit scores of 619 and below. Based on data produced by the
 14 Consumer Financial Protection Bureau ("CFPB"), in 2017 the highest
 15 Total Cost of Credit for unsecured private label credit cards was around
 16 40% for deep subprime and about 32% for subprime consumers. For
 17 2017 to 2020, the Total Cost of Credit for unsecured private label credit
 18 cards was at or below 40% for subprime and deep subprime consumers
 19 and that over that five year period, the rates were quite consistent –
 20 within a couple of percentage points from year to year. He further
 21 testified that from 2019 to 2020, the prime rate decreased about 2
 22 percentage points driving down most credit card rates.

23 b. In discovery proceedings in federal court, American First Finance was
 24 asked to produce all documents related to its determination of interest
 25 rates on its retail installment sales agreements. American First Finance
 26 produced 71 documents, of which 56 were marketing fliers from
 27 companies offering similar financial products, and of those fewer than

1 five advertised any interest rates. American First Finance reported that
 2 its President set the rates by looking at competitors' fliers and websites
 3 and that it had no analysis of its cost of capital or other relevant data.
 4 The senior management of American First Finance was unable to recall
 5 any calculations relating to determination of the standard APRs in its
 6 Security Agreements.

7 **E. Conspiracy to Violate TILA, the UCL and the CLRA.**

8 51. Prior to preparing the Security Agreement, American First Finance entered into
 9 an agreement with the Merchant in which the Merchant agreed that American First Finance
 10 would control the entire transaction with Plaintiff, including the design and delivery of all
 11 disclosures required under the Truth in Lending Act, 15 U.S.C. §1601, et seq. ("TILA"). The
 12 agreement may further be implied from the conduct of the Merchant and American First
 13 Finance as described herein.

14 52. TILA requires that certain defined information be disclosed in lending
 15 transactions, such as this transaction, and dictates how and when the disclosures are made.
 16 See, 15 U.S.C. §§1631, 1632, and 1638, and the regulations promulgated thereunder. TILA
 17 requires that the disclosures be made in a clear and conspicuous manner and that the APR and
 18 finance charge be made in a manner more conspicuous than the other disclosures.

19 53. American First Finance and the Merchant further were aware of each other's
 20 conduct in the context of the transaction described herein and intended that the acts described
 21 herein be committed.

22 **F. Grounds for a Public Injunction**

23 54. California Finance Code, §22001, provides as follows:

24 (a) This division shall be liberally construed and applied to promote its
 25 underlying purposes and policies, which are:

26 (1) To ensure an adequate supply of credit to borrowers in this state.

- (2) To simplify, clarify, and modernize the law governing loans made by finance lenders.
 - (3) To foster competition among finance lenders.
 - (4) To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.
 - (5) To permit and encourage the development of fair and economically sound lending practices.
 - (6) To encourage and foster a sound economic climate in this state.
 - (7) To protect property owners from deceptive and misleading practices that threaten the efficacy and viability of property assessed clean energy financing programs.

55. The scheme employed by American First Finance to evade the requirements of the California Financing Law by disguising its loans as retail installment contracts originated by retailers stands in stark contrast to the purposes and policies of the California Financing Law. American First Finance engages in unfair practices as set forth in this Complaint, including charging the unconscionable interest rates of 170% and higher, utilizing a loan origination process that masks the identity of the financer, that obscures and hides the material terms of the loans, including the interest rate, that incentivizes its retailer co-conspirators to mislead vulnerable consumers and even to cause Spanish speaking consumers to commit to transactions they cannot possibly afford, pursuant to which huge sums of money are electronically withdrawn from their bank accounts, often in the name of selling a “discount” item of furniture or repairing a vehicle that is a necessary to their ability to function. Eliminating these unfair practices will have a positive effect on the scrupulous lenders in this state by removing from the market a lender who competes not on price or quality, but on the ability to take down a vulnerable population that is not aware of other options.

1 56. Likewise, prohibiting the unlawful conduct of American First Finance will
2 encourage and foster a sound economic climate in this state because it will prevent vulnerable
3 consumers from becoming ensnared into this program which provides financing that often
4 destroys their credit, and removes funds from their bank accounts that they need to function
5 and would spend on food and housing and other productive aspects of this state's economy,
6 rather than become mired in uncontrollable debt at exorbitant rates.

7 57. Requiring American First Finance to compete on a level basis with other lenders
8 who are subject to the California Financing Law, or exit the market, will encourage the
9 development of fair and sound lending practices because it will remove unfair practices from
10 the market and allow lenders who comply with the purposes and policies ensconced in the
11 California Financing Law to have more space to flourish and expand their services. In this
12 way, enjoining the illegal conduct of American First Finance will foster competition between
13 finance lenders and will in no way reduce the adequate supply of credit to borrowers in this
14 state.

15 58. The UCL and CLRA also provide public policies that support public injunctive
16 relief in this case. In *McGill v. Citibank, N.A.*, 2 Cal.5th 945, 955 (2017), the California
17 Supreme Court stated that, "public injunctive relief under the UCL [and] the CLRA . . . is relief
18 that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury
19 to the general public." (Quotation marks and citation removed.)

20 59. American First Finance designed and implemented a process by which the
21 required disclosures are obscured and not presented in a clear and conspicuous manner. In this
22 case, the Merchant used the English version of the Security Agreement with a Spanish
23 speaking consumer. In most other cases, American First Finance's system uses two primary
24 methods for delivering the documents. One is by email delivered by Docusign to be received
25 on a consumer's cell phone while at the retail business. The other is on the merchant's
26 computer system, often using an electronic signature pad, where the content of the document is
27 on a separate screen not visible to the consumer when being asked to sign the document. In

1 both cases, the required disclosures are not clear and conspicuous because they are either on a
2 separate screen not visible, or the DocuSign system immediately scrolls past the disclosures to
3 the signature lines and has information on the screen which obscures the information that
4 flashes past. And even if the consumer were to try to access the document to read it, the
5 document is far too lengthy and complex to be viewed on a cell phone.

6 60. The intent of American First Finance to evade the provisions of the California
7 Financing Law is demonstrated by the lengths to which American First Finance goes to avoid
8 disclosing the APR on its contracts and the vulnerable population it selects as its targets. The
9 impact of its approach on California consumers is demonstrated by the myriad of complaints
10 from consumers in the files of American First Finance, the Better Business Bureau and the
11 Consumer Financial Protection Bureau. A sampling of complaints for the files of American
12 First Finance includes the following:

- 13 a. Complaint: Customer stated he did not sign the contract or the
14 application, the dealer signed for him. Resolution: Advised customer to
15 contact the store.
- 16 b. Complaint: The customer is complaining about the account, the
17 customer was saying that he did not sign the contract and he did not
18 authorize the automatic payment. Resolution: The customer will call the
19 store.
- 20 c. Complaint: Customer stated AAMCO signed the contract and that they
21 inform this was the same as cash. Resolution: left the customer a
22 voicemail.
- 23 d. Complaint: Customer saw that her APR% at 169.53. Customer did not
24 like that and states that the computer signed the contract. Resolution: I
25 educated the customer on terms and conditions of the contract.
- 26 e. Complaint: Customer reviewed contract sent and stated he never signed
27 and his signature was forged. Resolution: Customer informed the

1 merchant will not reduce the account since all of the services were
 2 provided.

- 3 f. Complaint: Customer states that she never signed agreement, store
 4 signed it for her without her permission. Resolution: We can see that
 5 the customer signed the agreement from her email. Customer asked for
 6 us to show proof but we cannot.
- 7 g. Complaint: Customer states the signature on the contract is not her
 8 signature. Resolution: Advised customer that is an E-sign and it is legal
 9 and asked her if she remembers clicking at the computer. She said she
 10 didn't remember.
- 11 h. Complaint: Customer said he never signed any contract but the person
 12 at the tire shop did. Resolution: Advised customer to fill out the ID
 13 Theft Report Form.
- 14 i. Customer says that he was not told about finance charges and never
 15 signed any docusign. Never given copy of contract from merchant.
 16 Resolution: Customer was sent a copy of his agreement where it shows
 17 that his account will not end until 02/2021 and customer was advised
 18 that he can pay off account at any time.

19 61. The Better Business Bureau Complaints about American First Finance reflect
 20 similar problems, including:

- 21 a. Attempted to contact customer service to pay off my ORIGINAL
 22 balance only for the very rude representative to tell me they would not
 23 be accepting my payment and that I should have read the details of my
 24 contract better.
- 25 b. The representative utilized my father's phone and after giving him the
 26 incorrect information the representative performed all of the online steps
 27 to apply for the loan. My father has automatically paid a total of

1 \$9195.36 and has a remainder of approximately \$7000 left to pay on this
 2 loan at 145% interest.

- 3 c. They then provided me with an electronically signed contract bearing
 my name that was never provided to me nor did I sign at the time of
 purchase. I asked them to please inform me what the rate of interest was
 on the loan and was informed that they were charging me 154.14%.
- 4 d. At the time of purchase I was told that this loan doesn't accumulate any
 interest or late fees.
- 5 e. American finance should be ashamed of how they are overcharging
 people! Especially without knowledge!
- 6 f. I am now obligated to pay a total of \$11,000 when I was only loaned
 \$3500 for a dog I will never see again. This 153% interest rate just
 doesn't seem legal as I feel this is a predatory lender I am dealing with.

14 62. A similar action against American First Finance is pending in the Northern
 15 District of California, entitled *Andrade v. American First Finance*, Case No. 3:18-cv-06743-SK
 16 (*Andrade*). On January 23, 2023, the Court granted summary judgment on the plaintiff's claim
 17 for a public injunction against American First Finance. The summary judgment was based on
 18 Article III standing only, which does not apply in this Court, and was not in any way a ruling on
 19 the merits of the request for a public injunction. The Court denied summary judgment on the
 20 merits of the UCL and CLRA claims asserted in *Andrade*.

21 **IV. CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **(Violation of the Unfair Competition Law,**

24 **California Business and Professions Code § 17200 et seq.)**

25 63. Plaintiff incorporates by reference the foregoing allegations.

26 64. Under the Unfair Competition Law ("UCL"), unfair competition includes any
 27 "unlawful," "unfair," or "fraudulent" business act or practice.

1 65. The UCL authorizes equitable relief for violations under Bus. & Prof. Code
 2 § 17203.

3 66. Respondent has committed and is continuing to commit acts of unfair
 4 competition, as defined by, and in violation of Bus. and Prof. Code § 17200 by the following
 5 acts which are more fully alleged above:

- 6 a. providing loans to California consumers without a valid license to do
 7 so;
- 8 b. failing to disclose finance terms at the time of sale;
- 9 c. concealing exorbitant and unconscionable interest rates and other loan
 10 terms;
- 11 d. refusing and failing to provide consumers with a copy of the Security
 12 Agreement;
- 13 e. misleading consumers as to the existence of financing by American
 14 First Finance;
- 15 f. willfully charging, contracting for, or receiving amounts not
 16 authorized by the California Financing Law, Cal. Fin. Code §22000, *et*
 17 *seq.* and the Truth in Lending Act 15 U.S.C. § 1601; 12 C.F.R. § 226;
- 18 g. willfully charging, contracting for, or receiving exorbitantly high
 19 interest rates that are unconscionable under California law;
- 20 h. negotiating loans in Spanish and then providing documents only in
 21 English in violation of Cal.Civ.Code §1632; and
- 22 i. designing unfair contracting practices that manipulate vulnerable
 23 consumers who have limited credit options by informing them that
 24 they have qualified for a loan but not disclosing to them the APR on
 25 the loan.

26 67. The APR that American First Finance identifies in its Security Agreements,
 27 including Plaintiff's agreement, is unconscionable under California Law:

- 1 a. Cal. Civ. Code §1670.5 codifies unconscionability as a contract defense;
- 2 b. The APR that American First Finance identifies in its Security
- 3 Agreements is both procedurally and substantively unconscionable as
- 4 alleged above;
- 5 c. Cal. Fin. Code §22302 expressly states that “[a] loan found to be
- 6 unconscionable pursuant to Section 1670.5 of the Civil Code shall be
- 7 deemed to be in violation of [California Financing Law];
- 8 d. Civ. Code § 1770(a)(19) states it is unlawful for any person to insert an
- 9 unconscionable provision in the contract “in a transaction intended to
- 10 result or that results in the sale or lease of goods or services to any
- 11 consumer.”

12 68. In addition to the facts alleged above, American First Finance violated the UCL
 13 and CLRA by acts committed in the context of servicing the Security Agreement and collecting
 14 thereon where the loan was rendered wholly or partially void or uncollectible under state-
 15 licensing and usury laws. Each of the representations made by American First Finance in this
 16 context constitutes illegal and deceptive acts, misrepresentations of the “approval or
 17 certification” of its acts, misrepresentation of the certification by another, representations that
 18 the services have approval and characteristics that they did not have, and representations that the
 19 transaction involved rights, remedies or obligations that it does not have or involve or that are
 20 prohibited by law.

21 69. Respondent’s policies and practices are unlawful, unfair, and fraudulent, and
 22 likely to mislead the general public and, consequently, constitute an unlawful, deceptive, and
 23 fraudulent business act or practice within the meaning of Bus. & Prof. Code § 17200.

24 70. As a direct result of the aforementioned acts, Respondent received and continues
 25 to hold ill-gotten gains belonging to Plaintiff. Plaintiff seeks to enjoin Respondent from
 26 engaging in said practices which will continue to injure and harm the members of the public
 27 who unwittingly purchase consumer goods without disclosure of American First Finance’s

1 financing and at unconscionable rates unless and until enjoined from doing so by this Court.
 2 Plaintiff also seeks restitution of all money and property obtained by Respondent from Plaintiff
 3 together with attorneys' fees and costs according to proof.

4 **SECOND CAUSE OF ACTION**

5 **(Violation of the Consumers Legal Remedies Act,
 6 California Civil Code § 1750 et seq.)**

7 71. Plaintiff incorporates by reference the foregoing allegations.

8 72. Plaintiff brings this cause of action against American First Finance.

9 73. American First Finance is a "person" providing "services" to "consumers" as part
 10 of a "transaction" as defined in Civil Code § 1761(a), (b), (c), (d) and (e).

11 74. Plaintiff is a "consumer" subject to the "transaction" as defined in Civil Code
 12 §1761(d), (e) and (g).

13 75. By engaging in the misrepresentations, concealments, and false statements
 14 alleged in this complaint, American First Finance has violated Civil Code §1770(a)(2), (3), (5),
 15 (14), (16) and (19).

16 76. American First Finance engaged in the acts and practices herein alleged as part of
 17 a pattern, plan, and scheme directed at Plaintiff and similarly situated members of the public,
 18 with intent to deceive and induce the purchase of goods through the use of a loan financed by
 19 American First Finance and increase the cost of those goods through the loan to the benefit of
 20 American First Finance and to the monetary detriment of Plaintiff and the public.

21 77. Plaintiff relied on the misrepresentations or was not aware of the material
 22 omissions and would not have purchased the goods or services from Merchant using financing
 23 provided by American First Finance had Plaintiff known the true facts.

24 78. Plaintiff does not seek damages on this claim at the time this complaint is filed.
 25 However, Plaintiff does seek restitution pursuant to Civ. Code § 1780(a)(3) and requests an
 26 order enjoining American First Finance's methods, acts, and practices in conducting

transactions in California in violation of the UCL, CLRA and the California Financing Law, as well as attorney's fees and costs according to proof.

79. American First Finance continues to engage in the unlawful conduct described herein to the detriment of the members of the general public of the State of California, such that a public injunction prohibiting such conduct is appropriate.

80. Plaintiff has provided notice to American First Finance, contemporaneously with serving this complaint, indicating particular alleged violations of § 1770 and demanded that it correct, repair, replace, or otherwise rectify the conduct alleged to be in violation of § 1770. The notice was given in writing and sent by certified mail, return receipt requested, to the place where the Security Agreement prepared by American First Finance required notices to be sent; American First Finance does not have a principal place of business in California. By operation of law and without leave of the court this complaint will be automatically amended to state a claim for damages pursuant to Civ. Code § 1782(d) upon the expiration of thirty days after the notice is given.

81. Plaintiff has suffered damages in the amount of all funds paid by Plaintiff to American First Finance, plus prejudgment interest, and further damages according to proof, except that no damages are sought on Plaintiff's claim pursuant to the CLRA until 30 days after the notice required by Civ. Code § 1782(a) is given.

82. American First Finance did the above acts willfully, fraudulently, oppressively, maliciously, and with intent to injure and damage Plaintiff. Upon the expiration of 30 days after the notice required by Civ. Code § 1782(a) is given, Plaintiff seeks punitive damages pursuant to Civ. Code § 1780(a)(4), according to proof.

THIRD CAUSE OF ACTION

(Failure to Provide Spanish Language Contract

Violation of Civil Code § 1632)

83. Plaintiff incorporates by reference the foregoing allegations.

84. Plaintiff speaks Spanish as his primary language.

85. California Civil Code § 1632(b) requires that businesses conducting a transaction primarily in the Spanish language provide the other party with a Spanish language translation of the contract or agreement prior to its execution.

86. Merchant is engaged in a trade or business and spoke only Spanish with Plaintiff throughout the above-described sale transaction.

87. However, Merchant did not provide Plaintiff with a Spanish-language translation of the English-language Security Agreement prior to its execution.

88. Neither Merchant nor American First Finance provided Plaintiff with a Spanish-language Security Agreement at any time.

89. Because Merchant did not comply with the requirements of Civ. Code § 1632, Plaintiff elects to rescind the Security Agreement, and agrees to return all consideration received from Merchant, and requests return of all consideration given to Merchant.

90. Merchant fraudulently concealed its conduct by failing to conspicuously display signage in Spanish to the effect that the Merchant was required to provide a contract or agreement in Spanish and AFF fraudulently concealed the Merchant's misconduct by collecting from Plaintiff's bank account and otherwise continuing to process, service and collect on the loan without providing Plaintiff a copy of the agreement in Spanish.

PRAYER FOR RELIEF

THEREFORE, Plaintiff prays for the following relief:

1. A determination that Respondent's Security Agreements are loans subject to the California Financing Law;

2. A determination that Respondent did not have the license required by the California Financing Law necessary to offer, make and fund loans in California;

3. A declaration that Respondent's Security Agreements are void and that no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction;

1 4. A determination that the interest charged pursuant to the Security Agreement is
 2 unlawful;

3 5. A determination that the APR Provision in the Security Agreement requiring
 4 Plaintiff to pay the stated APR is unconscionable;

5 6. Preliminary and permanent injunctions preventing Respondent from engaging in
 6 the practices which continue to injure and harm Plaintiff and other members of the general
 7 public;

8 7. An order for restitution to Plaintiff for all principal, interest, charges, or
 9 recompense in connection with the transaction paid to Respondent to date and disgorgement of
 10 all profits;

11 8. Rescission of the Security Agreement and restitution of all money paid
 12 thereunder;

13 9. An award of monetary damages, including incidental and consequential damages,
 14 according to proof;

15 10. An award of prejudgment interest according to proof;

16 11. An award of all statutory, treble, or punitive damages available under the law;

17 12. An award of Plaintiff's reasonable attorneys' fees and costs of suit; and,

18 13. An award to Plaintiff of further relief as the Court may deem appropriate, just,
 19 and proper.

20 DATED: August 28, 2023

GREEN & NOBLIN, P.C.

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